

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL ALBERT,

Plaintiff,

vs.

MONTANA DEPARTMENT OF
CORRECTIONS, REGINALD D.
MICHAEL, MISSOULA COUNTY,
CORRECTIONAL HEALTH
PARTNERS, PAUL REES, HEIDI
ABBOTT, MELISSA SCHARF, ALLY
CARL, TRISTAN KOHUT, CONNIE
WINNER, KIMBERLY FISK, JORDEN
MCDONALD, ALVIN FODE, JIM
SALMONSEN, STEVEN WEBER,
MIKE HERBERT, PATRICK MARTIN,
STEVE KREMER, RUSS DANAHER,
LEROY KIRKEGARD, ABBY
MARTIN, AND LESLIE THORNTON,

Defendants.

CV 17-00069-H-BMM-JTJ

ORDER

Plaintiff Michael Albert and Defendants Correctional Health Partners and Missoula County, filed a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure and stipulated to the voluntary dismissal of this action with prejudice against Defendants Correctional Health Partners and Missoula County. (Doc. 74.) Rule 41(a)(1)(A)(ii) provides

that a plaintiff may dismiss an action without a court order by filing “a stipulation of dismissal signed by all parties who have appeared.” A party may also dismiss an action by filing a motion requesting the Court to dismiss the action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court. *Hamilton v. Firestone Tire & Rubber Co. Inc.*, 679 F.2d 143, 145 (9th Cir. 1982).

The Notice of Voluntary Dismissal filed in this case, however, is defective under Rule 41(a) because it is not a signed stipulation by all parties who have appeared and it is not a motion under Rule 41(a)(2). If Mr. Albert wishes to dismiss certain Defendants from this action, he must comply with the procedures set forth in Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under Rule 41(a)(2).

Accordingly, IT IS HEREBY ORDERED THAT the Notice of Voluntary Dismissal (Doc. 74) is deemed ineffective and DENIED without prejudice.

DATED this 19th day of June, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge